

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Roberta D. Vincent,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1196 C.D. 2009
	:	SUBMITTED: December 11, 2009
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE:**   **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge  
              **HONORABLE BERNARD L. MCGINLEY**, Judge  
              **HONORABLE MARY HANNAH LEAVITT**, Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED:** February 26, 2010

Roberta D. Vincent petitions for review of an order of the Unemployment Compensation Board of Review (Board) which affirmed the decision of the Referee denying Vincent’s request for unemployment benefits under Section 402(b) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b). Section 402(b) provides that a claimant is ineligible for benefits for any week in which his or her unemployment is due to voluntarily leaving work without a necessitous and compelling cause. After review, we affirm.

Vincent was employed for 31 and ½ years as a phlebotomist by Excela Health Frick Hospital. On Friday, January 9, 2009, Claimant got into a verbal altercation with the daughter of a patient. Claimant explained that the previous year had been very stressful and busy at the clinic, with many of the patients upset because they no longer had a waiting room available to them, as the room had been repurposed as a courier center. On that last day she worked, Claimant testified that many patients had been waiting for close to two hours before being seen, and that the daughter of one patient became very angry and was yelling at another co-worker because there was no waiting room. Later, Claimant approached the patient's daughter to explain that, in addition to ordering blood work, her mother's doctor had also ordered tests on urine and stool samples, which Claimant needed to test for blood. When Claimant asked the daughter whether her mother was going to provide the requested samples, Claimant testified that the daughter began yelling at her and shook her finger in Claimant's face. Claimant testified that she began crying and shaking and, "I said I can't take this anymore." Hearing of March 11, 2009, Notes of Testimony (N.T.) at 3. Claimant stated that she then "went and called my boss and said I quit." *Id.* Claimant went immediately to her family doctor who prescribed medication for anxiety disorder. Claimant added that she had previously refused to treat a patient who had threatened to punch her in the face and that she reported this incident to her supervisor. She was not disciplined for refusing to treat the patient.<sup>1</sup>

The Referee made the following findings of fact, which the Board adopted:

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<sup>1</sup> Employer did not appear at the hearing to offer testimony or evidence into the record.

1. From June 7, 1977 to January 9, 2009, the claimant was employed by Excelsa Health Frick Hospital, as a full-time phlebotomist, earning \$12.85 per hour.
2. During her last year of employment, the claimant noted an increase in patient dissatisfaction and the manner in which they addressed the health professionals.
3. The employer has established [a] “panic button” on the wall of the facility to call for help if an employee feels they are in danger.
4. The claimant was not under the care of a physician at the time of her separation.
5. On January 9, 2009, the claimant was confronted by the daughter of a patient.
6. The female family member was rude and yelled at the claimant.
7. The claimant said “I can’t take this’ and left the patient area.
8. The claimant called her supervisor and resigned her position.
9. The claimant took off her identification tag and left the job site during her scheduled shift.
10. The claimant had previously refused to treat an abusive patient, and no disciplinary action was taken.
11. The claimant sought medical care following her resignation.
12. The claimant did not talk to any supervisor or manager following the incident with the patient’s daughter and before her resignation.
13. The claimant did not push the panic button for assistance.

Referee's Decision/Order, Date mailed 3/11/09, at 1-2. The Referee then concluded that while Claimant "has provided competent testimony of some difficult conditions at the work site . . . [she] has failed to provide any competent evidence that she made a good faith effort to remain employed." *Id.* at 2. The Referee affirmed the Unemployment Compensation Center's denial of benefits under Section 402(b) of the Law.<sup>2</sup>

After the Board affirmed, Claimant appealed to this court, arguing that she established necessitous and compelling reasons for her voluntary quit by her testimony that working conditions had been deteriorating for over a year, that this stressful and even dangerous environment she worked in led to her having symptoms of sleeplessness, crying, shaking and feeling like she was having a nervous breakdown. Claimant argues that her undiagnosed anxiety disorder would cause any reasonable person to quit and that she exercised common sense in quitting. In the alternative, Claimant contends that her medical condition on the day she quit excused her from seeking any alternative remedies before quitting. Claimant further argues that she did everything that she could to preserve her employment, asserting that for a year prior to quitting, she attempted to work with her supervisor concerning the stressful work conditions, that she even went over his head to discuss the matter with Human Resources, and that she even brought in her union representative to assist in solving the problem. Finally, Claimant argues that this court should remand the matter to the Referee to allow her to present evidence that she did make good faith efforts to preserve her employment, as outlined above, and to offer the testimony of a co-worker to corroborate what happened on the day Claimant quit.

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<sup>2</sup> 43 P.S. § 802(b).

The Board counters that there is substantial evidence in the record to support the finding that Claimant quit without notice to her employer and without allowing Employer the opportunity to address her concerns. Furthermore, the evidence set forth by Claimant in her letter to the Board and in her brief, that she did try to seek solutions to the allegedly intolerable working conditions for a year prior to quitting may not be considered by this court as it is not part of the record. *Croft v. Unemployment Comp. Bd. of Review*, 662 A.2d 24 (Pa. Cmwlth. 1995).<sup>3</sup>

The law is well settled that in order to receive benefits under Section 402(b) of the Law, Claimant must prove that her voluntary quit was due to reasons of a necessitous and compelling nature. *Collier Stone Co. v. Unemployment Comp. Bd. of Review*, 876 A.2d 481, 484 (Pa. Cmwlth. 2005). In this regard, we explained that:

In order to show a necessitous and compelling reason to quit, the claimant must show that circumstances existed which produced real and substantial pressure to terminate employment; such circumstances would compel a reasonable person to act in the same manner; the claimant acted with ordinary common sense; and the claimant made a reasonable effort to preserve her employment.

*Id.* (citation omitted). Whether the evidence is legally sufficient is a question of law. *Kirkwood v. Unemployment Comp. Bd. of Review*, 525 A.2d 841, 844 (Pa. Cmwlth. 1987).

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<sup>3</sup> In *Croft*, we held that the Board may not consider “post-hearing factual communications in its determination, as [it] is restricted to the facts and the law pertinent to the issues involved on the basis of evidence *previously* submitted.” 662 A.2d at 28 (emphasis in original). We also held that we could not consider “auxiliary information appended to a brief that is not part of the certified record on appeal . . . .” *Id.* (citation omitted).

Turning to the matter *sub judice*, we note that while Claimant contends in her brief that she made numerous attempts to resolve the problems at work with her supervisor and that he repeatedly failed to address the issues, Claimant did not specifically testify to this at the hearing, stating only that “[y]es, all of us have [personally complained to management].” N.T. at 5.<sup>4</sup> What she did testify to was the often stressful and extremely difficult situation at work caused by the increased patient dissatisfaction and the lack of a proper waiting room for the patients. She admitted that she was not being treated by a doctor before she quit and that it was only after she quit that she learned she was suffering from Anxiety Disorder. Claimant did not testify that she discussed any of her stress-related physical problems with Employer.

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<sup>4</sup> Specifically, Claimant asserts that the increased work load, patient dissatisfaction with lengthy waits for tests, and patients and their companions becoming abusive, were all issues that she and her co-workers “repeatedly brought to the attention of the . . . supervisor, Laboratory Manager, John Zylka, on an almost weekly basis.” Claimant’s Brief, at 6. Claimant also asserted that when she did personally raise concerns to Mr. Zylka, he usually responded by telling her, “Well, if you don’t like it Wal-Mart is hiring.” *Id.* At other times, Claimant asserted that Mr. Zylka came down and screamed and yelled at her in front of the patients, never asking her side of the story. Claimant also alleges that she went over Mr. Zylka’s head to complain about the situation and Mr. Zylka’s handling of it and also that she contacted a union representative “to help with the situation.” *Id.* at 7. Claimant did not testify to any of these matters at the hearing, although she raised these identical issues in a letter to the Board, in which she explained that, “[a]t my appeal hearing I was very nervous and forgot to explain to the referee that I had gone to my supervisor many times before to have problems such as I described resolved which he would never take care of.” *Id.* at R. 5a. Our review of the transcript reveals that the Referee gave Claimant ample opportunity to testify concerning both the deteriorating work conditions and the events on the day Claimant quit. We find nothing to suggest that Claimant was prevented from presenting any evidence, including the testimony of her co-worker, which she now alleges requires a remand to be heard. While we sympathize with the Claimant, we are bound by the facts of record, as set forth by the Referee and adopted by the Board. Accordingly, we may not consider facts set forth by Claimant for the first time before the Board or this court.

In order to prevail on her claim for benefits under Section 402(b) due to her alleged stress-related medical condition, Claimant had the burden to show that her condition prevented her from performing her job. *Genetin v. Unemployment Comp. Bd. of Review*, 499 Pa. 125, 451 A.2d 1353 (1982). Claimant must also prove that she communicated this medical condition to her employer and that she remained available for a suitable accommodation, if one was available. *Id.* at 130-31, 451 A.2d at 1356. Benefits will be denied where the claimant did not give timely notice to the employer, thus preventing employer from being able to accommodate claimant. *Blackwell v. Unemployment Comp. Bd. of Review*, 555 A.2d 279 (Pa. Cmwlth. 1989).<sup>5</sup>

A review of the record reveals that there is substantial evidence to support the Board's findings. While the record reflects that Claimant often worked under difficult circumstances, there is no evidence to support that Claimant made a reasonable effort to preserve her employment. In addition, there was no evidence that Claimant supplied Employer with the requisite notice. The Board properly concluded that Claimant failed to demonstrate necessitous and compelling reason to terminate her employment.

Accordingly, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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<sup>5</sup> In *Blackwell*, we concluded that claimant had not given the requisite notice of her health problems to employer before she quit. We also rejected her alternative arguments that her resignation letter gave the requisite notice, as it came too late to allow employer to accommodate her, as well as the doctor's note, dated subsequent to her resignation, for similar reasons. 555 A.2d 279, 282 fn.6.

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**ORDER**

AND NOW, this 26th day of February, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge